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Supreme Court of the United States

OCTOBER TERM, 1968

No. 353

ELIJAH WHITE RATCLIFF,
Petitioner,

versus

E. IVAN BRUCE AND TRUMAN BLOCKER, JR.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS.

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TO THE HONORABLE EARL C. WARREN, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Elijah White Ratcliff, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Texas entered in the above cause on the 15th day of May, 1968, on which a motion for rehearing, duly and timely filed, was overruled on the 5th day of June, 1968.

OPINIONS BELOW.

The Judgment of the District Court of the 56th Judicial District of Texas rendered on the 15th day of March, 1968 in Cause No. 102,754 appears at pages 25 and 26 of the Transcript from the trial Court (See Record Instrument II). A Motion for New Trial was timely filed (See Transcript pp. 32-33; Record Instrument II) but overruled by the presiding Judge.

The opinion of the Court of Civil Appeals for the 14th Supreme Judicial District of Texas rendered January 17, 1968 is reported in 423 SW2d 614 (1968), and a copy of said opinion with letters of transferral from the First Supreme Judicial District is attached hereto as Appendix B and also appears as a part of the printed record (See Record Instrument XVIII).

The judgment of the Supreme Court of Texas of May 15, 1968 refusing Petitioner's Application for a Writ of Error is attached hereto as Appendix A, and the Clerk of the Supreme Court of Texas' Order of overruling of motion for rehearing is attached hereto as Appendix A, effective June 5, 1968 (See official Order of the Court in Record of the Supreme Court of Texas, Instrument III).

JURISDICTION.

The judgment of the Supreme Court of Texas was made on the 15th day of May, 1968, and a copy of the Order as above referred to is attached to this Petition

as Appendix A. The motion for rehearing was timely filed, and the same was denied on June 5, 1968 as shown in Appendix A attached hereto. The judgment became final on June 20, 1968 pursuant to *Rule 506, Texas Rules of Civil Procedure*, which provides that such judgments shall become final after the expiration of fifteen (15) days from the date judgment was rendered (See Record of the Supreme Court of Texas, Instrument III).

This Petition is timely filed under *Title 28, U. S. C., Section 2101 (c)*, and jurisdiction of the Supreme Court of the United States is invoked under the provisions of *Title 28, U. S. C., Section 1257 (3)* as a Petition for a Writ of Certiorari to the Supreme Court of Texas where the rights of Petitioner under the Constitution of the United States of America are being infringed upon by the actions of Respondents approved by the Supreme Court of Texas and its lower courts.

QUESTIONS PRESENTED.

The questions presented through this proceeding are whether the actions of the trial and appellate courts of Texas deny Petitioner constitutionally protected rights under the Fifth Amendment to the United States Constitution or deny Petitioner's constitutional rights guaranteed by the Fourteenth Amendment to the United States Constitution.

Petitioner was confined to the University of Texas Medical Branch at Galveston, Texas for approxi-

mately seventy four (74) days beginning in September 1964 and terminating November 20, 1964. He was prevented, thereby, from concluding certain cases he had pending during such period and further from maintaining his general practice as an attorney at law licensed to practice in the State of Texas.

Respondent E. Ivan Bruce was the superior official among several employees of the University of Texas Medical Branch at Galveston, Texas who undertook to treat Petitioner for an alleged illness after coaxing Petitioner's father to sign a consent to treatment form used by the medical branch hospital. Respondent Truman Blocker, Jr. is the director of the University of Texas Medical Branch at Galveston, Texas who maintained the policy which permitted Petitioner to be treated without his consent.

A summary judgment was requested but without success, and the case was adjudicated in trial and appellate court proceedings through the Supreme Court of Texas resulting in errors as follows:

I. The trial Court erred in failing to grant summary judgment for Petitioner since there was no genuine issue as to a material fact on the question of whether Respondents had obtained Petitioner's informed consent prior to administering treatment to him.

II. The trial Court erred in granting summary judgment for Respondents when the uncontestable

facts established that summary judgment should have been granted for Petitioner.

III. Respondent Truman Blocker, Jr.'s conduct is distinguishable from the rule under *respondeat superior* because he was guilty of acts of nonfeasance and misfeasance by his own admission in maintaining a policy at the University of Texas Medical Branch at Galveston, Texas which permitted treatment of an individual without his consent.

IV. The trial Court perfected what must be recognized as a courtroom mockery and an effective denial of due process in the following particulars:

A. It was error for the trial Court to refuse summary judgment for Petitioner and dismiss a Respondent, who was a necessary party, prior to the trial of the suit.

B. It erred in allowing Respondent to testify without restriction on direct examination and in not ordering him to be responsive upon objection being properly made.

C. It erred in refusing to admit into evidence papers from another proceeding tending to impeach the diagnosis and medical conclusions of Respondent E. Ivan Bruce.

D. It was error for the trial Court to permit Respondent E. Ivan Bruce to read certain subjective narrative from his medical records calculated to produce prejudice against Petitioner.

E. It erred in refusing to permit Petitioner to introduce correspondence showing the unreliable character of Respondent E. Ivan Bruce's medical testimony.

F. The Court erred in refusing Plaintiff's Motion for Leave to File Amended Petition to conform to the evidence and proof presented upon the trial.

CONCLUSION: The Court of Civil Appeals and the Supreme Court of Texas erred in not reversing the trial Court's Judgment on each of the foregoing essential points of error resulting in a deprivation of Petitioner's "day in court."

V. The appellate courts of Texas erred in refusing to reverse the decision of the trial Court because of Petitioner's inability to obtain a complete record for the Court of Civil Appeals prior to submission and oral argument where such inability was not the fault of Petitioner or anyone acting in his behalf.

VI. Plaintiff's Second Amended Original Petition was adequate under law to support his case, and it was reversible error for the trial Court to refuse Plaintiff's Third Amended Original Petition offered in the interest of clarity and the "Special Issues" timely submitted.

VII. The trial Court erred in allowing any amount of testimony of Respondent E. Ivan Bruce which was

not responsive and in answer to specific interrogatories of Petitioner to be considered by the jury without permitting the impeachment evidence offered by Petitioner.

VIII. The Court of Civil Appeals' opinion, affirmed by the Supreme Court of Texas, does not reflect a recognition on the part of the courts of the points of error cited by Petitioner or an intention to view the trial proceeding as depicted by the record, and the standard of due process under the Fifth Amendment to the Constitution of the United States made applicable to the states by the Fourteenth Amendment to the Constitution of the United States is flagrantly violated.

STATUTES INVOLVED.

Article 1728 (6), Vernon's Annotated Texas Statutes—Appellate Jurisdiction; *Article 2249, Vernon's Annotated Texas Statutes*—To Court of Civil Appeals; *Article 3713, Rule 11, Vernon's Annotated Texas Statutes*—Evidence; *Rule 67, Texas Rules of Civil Procedure*—Amendments to Conform to Issues Tried Without Objection; *Rule 90, Texas Rules of Civil Procedure*—Waiver of Defects in Pleading; *Rule 166-A, Texas Rules of Civil Procedure*—Summary Judgment; *Rule 169, Texas Rules of Civil Procedure*—Admission of Facts; *Rule 353, Texas Rules of Civil Procedure*—Notice of Appeal; *Rule 354, Texas Rules of Civil Procedure*—Cost Bond; *Rule 355, Texas Rules of Civil Procedure*—Party Unable to Give Cost Bond;

Rule 386, Texas Rules of Civil Procedure—Time to File Transcript and Statement of Facts. All of the foregoing statutes and rules are set forth in full with the constitutional provisions to which they relate in this Petition for a Writ of Certiorari as Appendix E beginning at p. 57.

STATEMENT OF CASE.

The case in question was initiated as a malpractice suit in the 56th Judicial District of Texas wherein Petitioner was Plaintiff and Respondents were Defendants (See Transcript pp. 3-7; Record Instrument II).

Petitioner is an attorney at law who was practicing in Livingston, Polk County, Texas when a determination was made by certain citizens and officials of the community that he should be confined to the University of Texas Medical Branch at Galveston, Texas or Rusk State Hospital for treatment of an alleged mental disorder (See Record Instrument XII, p. 116). At the time his confinement materialized, he had cases pending in courts awaiting appellate procedural completion totaling Six hundred sixty thousand ($660,000.00) dollars (See Record Instrument XII, pp. 167-169), as well as other legal matters (See Record Instrument XII, p. 170). He was also awaiting his date to report to active duty as an officer in the U. S. Army Reserve (See Record Instrument XII, pp. 186-201).

Each case pending appellate review during the period of Petitioner's confinement was lost for failure

to comply with procedural requirements of Texas law and as a proximate cause from the wrongful confinement of Petitioner by Respondents. Many legal matters which Petitioner would have handled during the general period of time corresponding with his confinement were irreparably lost attributable to the confinement itself as well as the medicinals and treatment administered during the period of his confinement which negatively affected his ability to perform numerous functions properly after his release.

Article I, Section 19 of the Texas Constitution provides that no citizen shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised except by the due course of the law of the land (See Appendix E). But four out of these five rights enumerated were specifically abused by the actions of Respondents, sanctioned by the Texas judiciary resulting in a monetary loss of proceeds from cases and injury by administering drugs and treatment to Petitioner which rendered him incapable of sustained and deliberate rationality.

The same conduct is also violative of rights guaranteed by the *Amendments to the Constitution of the United States, Article V,* and *Amendments to the Constitution of the United States, Article XIV, Section 1* (See Appendix E), establishing a basis for this Petition for a Writ of Certiorari to the Supreme Court of Texas.

The trial of the instant cause in the 56th Judicial District of Texas was characterized by a mass of in-

conceivably flagrant errors to which Petitioner objected and excepted at the time of and immediately following commission (See Statement of Facts, Volume I; Record Instrument XII).

After the trial which concluded on March 15, 1967, Petitioner filed a Motion for New Trial (See Transcript pp. 32 to 34; Record Instrument II) setting forth the grounds for his motion, but which was overruled by the Court. Petitioner then proceeded to appeal through the highest Court of Texas, enumerating in detail through Appeal in the Court of Civil Appeals an Application for Writ of Error in the Supreme Court of Texas the errors by each court which were in fact violative of the due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States (See opinion of the 14th Court of Civil Appeals, Appendix A; Record Instrument XVIII); Filing of Application for Writ of Error by Clerk of the Supreme Court of Texas on February 29, 1968; Record of the Supreme Court of Texas, Instrument IV). The specific points of error are designated at page 4 of Petitioner's Application for Writ of Error in the Supreme Court of Texas (See Record; Supreme Court of Texas, Instrument IV, p. 4) and subsequently argued in conformity with and as prescribed by *Article 1728, Subdivision 6, Vernon's Annotated Texas Statutes.*

Also, it should be noted, Petitioner was unable to obtain a complete record of the trial proceedings prior to submission and oral argument by the Court

of Civil Appeals, and the Clerk of the Court of Civil Appeals refused to file the additional necessary record for subsequent consideration of the Texas judiciary which factor alone is grounds for reversal (See Record Instrument XX). *Koonce v. City of Mesquite*, 382 SW2d 309 (1964).

REASONS FOR GRANTING THE WRIT.

Under *Title 28, U. S. C., Section 1257 (3)*, the Supreme Court of the United States is authorized to review by writ of certiorari any civil or criminal case wherein a final judgment or decree has been rendered by the highest court of the State in which a controversy was adjudicated where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

This Court has for decades followed the rule that an unconstitutional exercise of authority under laws which are valid are properly reviewable by the Supreme Court of the United States by writ of certiorari. *Zucht v. King*, 260 U.S. 174 (1922).

The validity of no State law is questioned, and *Article I, Section 19 of the Texas Constitution* affords the most descriptive source of the rights which Peti-

tioner seeks to have protected (See Appendix E). Petitioner's argument here as in the appellate courts of Texas is that the Constitution, statutes, rules of procedure and common law comprising Texas law were adequate to secure Petitioner equal protection of the laws if applied indiscriminately, but Respondents with the sanction of the Texas judiciary are seeking to deny Petitioner due process of law under the Fifth Amendment to the Constitution of the United States as well as the Fourteenth Amendment to the Constitution of the United States. *Williams v. Kaiser,* 323 U.S. 471 (1945); *Hawk v. Olson,* 326 U.S. 271 (1945).

ARGUMENT—DISCUSSION OF FACTS AND AUTHORITIES.

I.

In August of 1965, Petitioner filed Plaintiff's Second Amended Original Petition in Cause No. 102,754 in the 56th Judicial District of Texas naming E. Ivan Bruce and Truman Blocker, Jr., hereinafter called Respondents, as Defendants. After each party to the suit had answered, Petitioner proceeded to take written interrogatories of John W. Ratcliff and County Judge E. C. Matthews then of Livingston, Polk County, Texas. Both gave testimony indicating in substance that Petitioner was confined to the University of Texas Medical Branch at Galveston, Texas without his personal consent, but pursuant to Respondents' efforts and the efforts of other unauthorized individ-

uals who, in addition to their lack of authority to have Petitioner confined to the medical facility, were not in a position to determine the presence or absence of a necessity for the treatment proposed by Respondent E. Ivan Bruce; nor were such other persons in a position to determine the presence or absence of a need for the treatment and medicinals in fact administered to Petitioner. These interrogatories appear in Volume I of the Statement of Facts (See Record Instrument XII, pp. 113-120) and in addition to the ones mentioned, interrogatories were propounded to Respondent E. Ivan Bruce who answered that Petitioner was referred to him by Dr. T. L. Gardner of Livingston, Texas as a mental patient, but it is not proposed that Petitioner had sought treatment from Dr. Gardner, or that Dr. Gardner had undertaken an examination of Petitioner. The latter interrogatory is not a part of the Record, to Petitioner's regret on the issue in summary judgment, but its substance is repeated on direct examination of Respondent Bruce (See Statement of Facts, Volume I, Instrument XII, pp. 39-41).

A Request for Admission of Facts was submitted to Respondent Truman Blocker, Jr., inquiring whether as Executive Director of the University of Texas Medical Branch at Galveston, Texas, it was consistent with his policy to admit a patient without the patient's consent, and his response was to inform the Court under oath that it was his policy to allow such a practice. This Request for Admission of Facts is to be found in the transcript at pp. 18-22 (See Record Instrument II).

Following the filing of the aforementioned interrogatories and admissions, the Court heard motions for summary judgment in behalf of the parties to the suit as shown at pages 3 through 7 and 11 through 23 of the Transcript on file in this proceeding (See Record Instrument II). Petitioner's position is that based upon the affidavits, including his supporting affidavit that he was confined to the University of Texas Medical Branch at Galveston, Texas during the calendar year 1964 without his consent, and the sworn interrogatories and admissions on file at the time of the summary judgment hearing (See Transcript, p. 8; Record Instrument II), he was entitled to a judgment for the amount of his pending cases at the beginning of his confinement period, as a matter of law, totaling Six hundred sixty thousand ($660,000.00) dollars (See Statement of Facts, Volume I; Record Instrument XII, pp. 166-170) since no genuine issue as to any material fact was raised on this point. Trial on the merits would have then been limited to damages resulting from the medicinals and treatment administered during Petitioner's confinement and from his absence from a progressing legal career. *Rule 166-A, Texas Rules of Civil Procedure; Walling v. Richmond Screw Anchor Company*, 154 F2d 780 (1946).

The false imprisonment of Petitioner resulting in the loss of his pending cases sets a unique precedent. Respondents' liability for their wrongful conduct in refusing to allow Petitioner to proceed to an appropriate termination of his pending suits is tantamount to the legal responsibility where a corporation re-

neges its obligation to issue a stock certificate to an individual stockholder who has fully paid for his interest in the corporation. *State ex rel. Brass v. Carpenter*, 37 NE 261 (1894). The measure of damages in both instances is the restoration of the individual to the same financial position he would have possessed in the absence of wrongful conduct on the part of the responding party. *Bounds v. Hickerson*, 63 SW 887 (1901).

The issue of value in all instances is remote and a matter of extreme controversy for academic purposes, but as a matter of law, value must be determined from the best available evidence. Where lost stock is involved, the law requires reference to the books of the corporation to determine its value, *Western Union Telegraph Company v. Davenport*, 97 U.S. 369 (1878), and the reasonable source of reference to determine the value of suits lost as a direct result of the wrongful conduct of second parties is the court records indicating the amount which was in controversy. This seems especially reasonable in an instance such as our present fact situation where the Respondents destroyed Petitioner's means for proving the specific elements and errors supporting his cases by chemically removing his detailed recollection of the facts and illegalities upon which his causes were based. *Nicketta v. National Tea Company*, 87 NE2d 30 (1949).

A summary judgment for Petitioner against both Respondents would not have deprived them of any statutory, constitutional or common law right since

there was no genuine issue as to any material fact with respect to the false imprisonment element of this malpractice suit. *Wyche v. Works*, 373 SW2d 558 (1963). Even though the primary factor in a summary judgment proceeding of whether there is a genuine issue of fact is viewed in a light most favorable to the party opposing the motion, *Panola County Commissioner's Court v. Bagley*, 380 SW2d 878 (1964), a court should not forsake the ultimate objective of such proceedings which is to limit the issues to be tried in a case. *Harrell v. Black*, 329 SW2d 127 (1959). The failure of the court to limit the issues in our instant case served to further confuse the jury in their deliberations and made the possibility of returning a fair and impartial verdict remote to Petitioner's detriment. Any consent obtained from John W. Ratcliff, the father of Petitioner, had no consequence with regard to the legal responsibility owed to Petitioner by Respondents to obtain his personal consent prior to administering medicinals and treatment to him and their liability flowing from the forcible treatment and confinement of him. Similarly, the reference from Dr. T. L. Gardner of Livingston, Texas, had no mitigating legal significance because Petitioner was not one of his patients and had not been examined or seen by Dr. Gardner prerequisite to the reference. Thus, the undertaking of Respondents in confining and treating Petitioner was an assault upon and a false imprisonment of him, *Moss v. Rishworth*, 222 SW 225 (1920), resulting in damages as a matter of law to the extent of his pending cases or Six hundred sixty thousand ($660,000.00) dollars and to an in-

definite degree resulting from the treatment and medicinals administered to Petitioner.

The acts of malfeasance and nonfeasance on the part of Respondents constituted a wrongful interference with the personal freedom of Petitioner and a restraint of his physical liberty amounting without doubt to a false imprisonment of him under well established principles of law within this jurisdiction. *A. Harris & Company v. Caldwell, et al.*, 276 SW 298 (1925); *Galveston, Houston & San Antonio Railway Company v. Harden*, 236 SW 146 (1922). The aforementioned and described illegal conduct on the part of Respondent E. Ivan Bruce was willful and intentional in placing Petitioner in a position where he could not exercise his will to go where he lawfully preferred, *Newton v. Rhoads Brothers*, 24 SW2d 378 (1930), for which Petitioner is entitled to be compensated, *Gold v. Campbell*, 117 SW 463 (1909), and the characterization of Respondent Truman Blocker, Jr.'s conduct, derived from his failure to establish a legal policy on admission of patients to the medical branch, makes it no less wrongful.

It is also immaterial that the conduct of Respondents did not purport to be a legal arrest, *Houston & Texas City Railroad Company v. Robertson*, 138 SW 822 (1911), since the activities and policies which they jointly effectuated were calculated to unlawfully detain, intimidate and restrain Petitioner from moving beyond designated bounds and, thus, a false imprisonment, *Chicago, R. I. & G. R. Co. v. Neubert*, 248 SW 139 (1923).

If the fact that one is liable to arrest and imprisonment is used as a threat to overcome his will and compel a settlement which he would not have made voluntarily, it is duress, the issue being whether his liability to imprisonment was used against him, by way of a threat, to force a settlement, *Morse v. Woodworth*, 29 NE 525 (1891). This case cannot be significantly distinguished from our instant facts relating to the role of Petitioner's father since no motive is presented which could conceivably have driven John W. Ratcliff to direct harmful treatment of his son, Petitioner, even if he had been authorized to take steps in Petitioner's stead. The obvious conclusion is that he signed the consent to treatment form under pressure attributable to Respondents (See Consent Form: Medical Record of Elijah White Ratcliff in Volume I, Statement of Facts; Record Instrument XII, p. 47). Judicial Notice of the standard use and manner of executing consent forms in Texas and the United States should have been taken by each lower court. *Mills v. Denver Tramway Corporation*, 155 F2d 808 (1946).

The cases Petitioner had pending on the appellate level had to be acted upon within a period which was less than the duration of his confinement. The law places liability on Respondent E. Ivan Bruce for the foreseeable consequences of his acts, and the matters in question relating to Petitioner's law practice could have been discovered, at least generally, through the exercise of reasonable diligence. *Landrum v. Wells*, 26 SW 1001 (1894); *Texas & P. R. Co.*

v. Parker, 68 SW 831 (1902). There is no proof that Respondent Truman Blocker, Jr., actively and personally participated in the assault upon and false imprisonment of Petitioner, but his liability stems from negligence in the establishment and maintenance of a policy which allows the treatment of an individual without the legal consent of the individual as conceded by him in his Response to Plaintiff's Request for Admission of Facts on file at pages 21 through 23 of the Transcript (See Record Instrument II). This response was on file when the summary judgment was considered by the trial Court, and the failure of the 56th Judicial District Court to grant Petitioner's motion against both Respondents to the extent of Petitioner's pending cases at the time of the confinement was error. *Harrell v. Black*, 329 SW2d 127 (1959).

Petitioner's first point of error in the Court of Civil Appeals (See Record of the Supreme Court of Texas, Instrument IV, p. 4) was that the lower Court erred in granting summary judgment for Respondent Truman Blocker, Jr., which was fundamental error apparent upon the face of the record, and the Court of Civil Appeals, as well as subsequently the Supreme Court of Texas, should have reversed the ruling of the trial Court on this point. *Murry v. Brisco*, 209 SW 2d 976 (1948); *Wagner v. Warnasch*, 295 SW2d 890 (1956). Judgment, on the contrary, should have been rendered in favor of Petitioner against both Respondents. Such summary judgment would not have deprived either Respondent Bruce or Respondent Block-

er of any statutory, constitutional or common law right since there was no genuine issue as to a material fact with regard to the false imprisonment element of this malpractice suit. *Wyche v. Works*, 373 SW2d 558 (1963).

Respondents were not the moving parties in the summary judgment proceeding initially. Petitioner moved for summary judgment, but in reply to his motion, Respondents each requested summary judgment. Petitioner's motion was accompanied by a supporting affidavit which showed conclusively that he was entitled to damages in the amount of Six hundred sixty thousand ($660,000.00) dollars as a consequence of his false imprisonment and showed presumptively his additional damages resulting from the wrongful administering of drugs and therapy by Respondents. *Harrell v. Black*, 329 SW2d 127 (1959) (See Transcript, pp. 11-13; Record Instrument II). It is also noteworthy that the absence of written motions for summary judgment by Respondents should presumptively support Petitioner's position that summary judgment for Respondent Truman Blocker, Jr., and the denial of summary judgment for Petitioner constitute fundamental reversible error. *Wyche v. Works*, 373 SW2d 558 (1963). Respondent Truman Blocker, Jr.'s liability is predicated upon his admission of the fact that Petitioner's confinement to the University of Texas Medical Branch at Galveston, Texas without consent was consistent with the policy Respondent Truman Blocker, Jr., has allowed to prevail as administrator and chief policy maker at the medical in-

stitution. Such a policy falls short of the requirements of law. *A. Harris & Company v. Caldwell, et al.*, 276 SW 298 (1925). No further effort was made to determine the connection of Respondent Truman Blocker, Jr., with the wrongful conduct against Petitioner following his dismissal from the suit, but his liability is a matter of law based upon admissions. *Galveston, Houston & San Antonio Railroad Company v. Harden*, 236 SW 146 (1922). *Rule 169, Texas Rules of Civil Procedure.*

Petitioner concedes that the doctrine of *respondeat superior* is not generally applicable to a state official operating in his official capacity, but when the negligent act complained of is an act of nonfeasance or misfeasance personally committed by the state official, such state official is liable for the reasons mentioned heretofore which are distinguishable from *State v. Morgan*, 170 SW2d 652 (1943); *Tumlinson v. City of Brownsville*, 178 SW2d 546 (1944), and *Clough v. Worsham*, 74 SW 350 (1903), upon which Respondents rely (See Record Instrument XV, p. 7). Fundamental error not assigned is available in the Supreme Court of Texas if it is apparent upon the face of the record and made a point of error in the Supreme Court of Texas. *Holland v. Nimitz*, 232 SW 298 (1921).

II.

The ultimate Judgment of the District Court was a product of prejudice resulting from the erroneous admission of certain evidence over the timely objec-

tions of Petitioner and the exclusion of other evidence which was offered by Petitioner and in fact relevant.

Petitioner urges this Court to review, generally, what the trial Judge, the Attorney for Respondent E. Ivan Bruce, and Respondent E. Ivan Bruce, personally, prefected to be a courtroom mockery (See Motion for New Trial, pp. 32-33 of Transcript; Record Instrument II). *Muncy v. Johnston*, 402 SW2d 525 (1966).

The following describes the pattern of errors in the admission of evidence during the testimony of Respondent E. Ivan Bruce and during the trial Court litigation overall. He was asked a series of questions by Petitioner as the first witness to take the stand during the presentation of Petitioner's case which he refused to answer properly and directly at page 74, Volume I of the Statement of Facts (See Record Instrument XII). He would convert each answer into a lecture on matters not germane to the suit. He was instructed by the Court to discontinue this pattern of response, after Petitioner's objection, but his manner of being unresponsive to the questions asked continued, and the Court refused to again instruct the witness to be responsive as is apparent from Volume I, page 74 of the Statement of Facts (See Record Instrument XII). He, also, refused to meaningfully instruct the jury to disregard the specific irrelevant and unresponsive testimony resulting in prejudice to Petitioner's case before the jury. *Missouri, Kansas & Texas Railroad Company v. Keaveny*, 80 SW 387 (1904).

At page 82 of Volume I of the Statement of Facts (See Record Instrument XII), it is shown that Petitioner inquired of Respondent Bruce, who was on the witness stand, about the source of his consideration for treating Petitioner at the University of Texas Medical Branch in Galveston, Texas. The question was intended to determine the exact relationship believed to exist between Petitioner and Respondent Bruce at the time of confinement. It was deemed pertinent to discover whether a true doctor-client relationship was contemplated by Respondent Bruce, or if Petitioner was a mere subject for investigative purposes with the doctor-client relationship existing between Respondent Bruce and the source of his consideration. The attorney for Respondents objected to the inquiry, and it was sustained. Petitioner excepted for the reasons given, and maintains that the ruling of the Court constitutes reversible error. *Hussman v. Leavell & Sherman*, 20 SW2d 829 (1929); *San Antonio Traction Company v. Higdon*, 123 SW 732 (1910).

In Volume I, page 101, of the Statement of Facts (See Record Instrument XII), Petitioner excepted to the Court's sustaining of Respondent's objection to the admission of Petitioner's and Respondent's Briefs in Wyatt v. Jones; No. 6900; Ninth Supreme Judicial District. *San Antonio Traction Company v. Higdon*, 123 SW 732 (1910). The Briefs were filed in an Appeal from the 9th Judicial District of Texas with Judge Earnest Coker presiding, the same Judge who made the recommendation that Petitioner should be confined, and who presided over the case involving min-

isters pending at the time of Petitioner's confinement to the medical facility in question (See Volume II, Statement of Facts; Record Instrument XIII, pp. 5-32). The proceeding in which the Briefs were filed was subsequent to Petitioner's release from the University of Texas Medical Branch in Galveston, Texas, and upon having them admitted into evidence, Petitioner could have proceeded to establish that Respondent E. Ivan Bruce's reliance on the recommendation of Judge Earnest Coker was wrongful since he should have known, or discovered, that Judge Coker has unbending preconceived unfavorable notions about Negroes with business objectives as goals which render him unworthy of evaluating their conduct when such matters are to be affected. The case involved another Negro in Polk County, Texas who undertook to develop a profit making enterprise, and who encountered difficulties under a certain contract with a white pulpwood agent also from Polk County, Texas. The evidence clearly established a breach of contract on the part of the agent, but Judge Coker read additional facts into the case to defeat the interest of the Negro undertaking a profitable pulpwood endeavor. The Briefs were admissible under *Article 3713, Rule 11 of Vernon's Annotated Texas Statutes* since the original documents were filed in the Ninth Supreme Judicial District in Beaumont, Texas, and were out of reach of a *subpoena duces tecum*. *Spaulding v. Smith*, 169 SW 627 (1914); *St. Louis & San Francisco Ry. Co. v. May*, 115 SW 900 (1909).

The admission of the requested evidence would have substantiated Petitioner's position that the reliance by Respondent E. Ivan Bruce on the recommendation of District Judge Earnest Coker as well as that of County Judge E. C. Matthews was an act of malpractice.

At page 104, Volume I of the Statement of Facts (See Record Instrument XII), Respondent E. Ivan Bruce offered into evidence the pleadings in Ratcliff v. Sagee, et al.; No. 7312; 9th Judicial District of Texas, and at page 109, Volume I of the Statement of Facts (See Record Instrument XII), Respondent Bruce offered into evidence the pleadings in Ratcliff v. Walker, et al.; No. 7405; 9th Judicial District of Texas. Petitioner objected to the admission of the pleadings in both cases because the proper predicate had not been laid. *Galveston, Houston & San Antonio Ry. Company v. Pitts*, 42 SW 255 (1897). Petitioner does not contest the appropriateness of the evidence for other purposes such as the issue on value of cases pending, but as presented, it had the effect of presenting the ultimate issues in the suit out of proper prospective resulting in prejudice to Petitioner on the issue of whether, under the facts, it was negligent for Respondents to treat Petitioner with the medicinals and devices used. The fact that Defendants in both cases were ministers and law enforcement officers, respectively, served to throw the issues out of context.

Petitioner objected to the admission of a totally inadmissible document at page 158, Volume I of the Statement of Facts (See Record Instrument XII). Respondent E. Ivan Bruce offered a letter written by Petitioner to him immediately after Petitioner's release from the University of Texas Medical Branch at Galveston, Texas requesting an earlier appointment than the one shown by his appointment card from Respondent Bruce. Petitioner objected to the evidence on the ground that the letter was irrelevant since, when written, Petitioner was under the acute influence of the medicinals administered at John Sealy Hospital; he had no recollection of the facts surrounding his treatment by Respondent Bruce; he was not cognizant of how his confinement at the University of Texas Medical Branch at Galveston, Texas occurred and was merely making an instinctive response to the appointment card Respondent E. Ivan Bruce had given him based on sensations then present without the mental ability to grant legal ratification. *Gray v. Allen*, 243 SW 684 (1922).

Along this same line of questioning (See Record Instrument XII, p. 160), Petiitioner objected to a question in behalf of Respondent E. Ivan Bruce asking whether Petitioner's contention was that his parents put him into the aforementioned confinement without his consent because the question was irrelevant, *Missouri, Kansas & Texas Railroad Company v. Keaveny*, 80 SW 387 (1904), since their actions did not have the effect of putting Petitioner in the hospital but were instances of acquiescence in confinement as a

product of duress. *Morse v. Woodworth*, 29 NE 525 (1891); *Chicago, R. I. & G. R. Co. v. Neubert*, 248 SW 139 (1923). The Court again sustained Respondent E. Ivan Bruce's position over Petitioner's timely objection and exception.

Litigating the same issue further at page 178, Volume I of the Statement of Facts (See Record Instrument XII), Respondent E. Ivan Bruce was asked whether Petitioner "consented to undergoing the diagnostic procedures" by the Attorney for Respondents. Petitioner objected to the question as calling for a legal conclusion of a witness, but the objection was overruled, and Petitioner excepted to the Court's action in allowing the witness to answer, "he did." It is Petitioner's argument that an opinion of a witness upon a matter involving a mixed question of law and fact is not admissible in evidence over a timely objection. *Gainesville, H. & W. Railway Company v. Hall*, 14 SW 259 (1890); *Williams v. Livingston*, 113 SW 786 (1908).

At page 171, Volume I of the Statement of Facts (See Record Instrument XII), Petitioner excepted to the trial Court's refusal to admit into evidence a series of letters from reputable psychiatrists from the State of Texas who refused to serve in the case and give testimony relating to the effect of the medicinals and drugs administered to him. The evidence would have tended to impeach certain testimony of Respondent E. Ivan Bruce, as a member of their special profession within the State, with regard to his

assertions on the appropriateness and effect of the medicinals and treatment given Petitioner. The letters were admissible under law prescribed by *Article 3713, Rule 11, Vernon's Annotated Texas Statutes*, since each of the physicians as well as the original instruments sought were outside the trial Court's jurisdiction. *Spaulding v. Smith*, 169 SW 627 (1914). This offer was repeated at page 207, Volume I of the Statement of Facts (See Record Instrument XII), but the Court sustained Respondent Bruce's objection to the admission of the letters to which Petitioner excepted for the evidence was deemed relevant to impeach the testimony of Respondent E. Ivan Bruce and further establish negligence on the part of him. *San Antonio Traction Company v. Higdon*, 123 SW 732 (1910).

After direct and cross-examination of Respondent E. Ivan Bruce was concluded, Petitioner read into evidence the written interrogatories of John W. Ratcliff, E. C. Matthews and Elijah White Ratcliff included in Volume I of the Statement of Facts (See Record Instrument XII, pp. 113-125), each contributing to establish the absence of consent by Petitioner to the introduction of medicinals and treatment by Respondents to him, but that such treatment as well as medicinals were administered forcibly initially and continued while Petitioner was under the influence of pharmaceuticals and legally incapable of granting consent. *Gray v. Allen*, 243 SW 684 (1922); *Lemons v. Davis*, 306 SW2d 224 (1957). It is Petitioner's point that the interrogatories taken established conclusive-

ly liability on the part of Respondent E. Ivan Bruce and corresponding liability on the part of Respondent Truman Blocker, Jr., for damages resulting from the assault and false imprisonment of Petitioner, the measure of damages flowing from the wrongful confinement being the amounts in controversy in the cases Petitioner had pending that he lost during such confinement as reflected by the petitions and notices of appeal admitted into evidence as "Plaintiff's Exhibits," to be found in Volume I of the Statement of Facts, and which amounts totaled Six hundred sixty thousand ($660,000.00) dollars (See Record Instrument XII, pp. 113-125). *Article 2249, Vernon's Annotated Texas Statutes*, and *Rules 353, 354, 355 and 356, Texas Rules of Civil Procedure*, set forth the prerequisites for an appeal to be taken, and *Rule 386, Texas Rules of Civil Procedure*, establishes a time limitation for filing the record in a Court of Civil Appeals. It is not contestable that the Respondents precluded Petitioner's compliance with the cited procedural requirements (See Appendix E).

Also, it should be emphasized that the correspondence between Petitioner and psychiatrists in the State of Texas mentioned previously which was not admitted into evidence but is a part of the record showed a "hands off" policy assumed by each and an unwillingness to be associated with the case and give testimony in spite of an assurance of adequate compensation. It is Petitioner's conviction that such responses, considered in conjunction with the stature of influence of the University of Texas Medical

Branch at Galveston, Texas, would have tended to impeach the testimony of Respondent E. Ivan Bruce as unreliable since there was a blanket refusal of his associates throughout the State to cooperate by granting their services to Petitioner in the development and presentation of his case. Such letters, accumulated in the normal course of Petitioner's law practice, were admissible to show the truth of the relevant matters stated therein since the primary evidence was outside the jurisdiction of the trial Court (See Record Instrument XIII, pp. 12-17e). *Article 3713, Rule 11, Vernon's Annotated Texas Statutes; San Antonio Traction Company v. Higdon,* 123 SW 732 (1910). Although it may be a mere link in the entire chain of evidence concerning a principal issue, evidence is deemed relevant if it tends to prove or disprove any fact in issue, or if it is capable of affording any reasonable presumption or inference as to the principal matter in dispute. *Hussman v. Leavell & Sherman,* 20 SW2d 829 (1929).

The letters which were offered into evidence by Petitioner, if considered by the appellate courts, would have shown that the trial Court erred in allowing the testimony of Respondent E. Ivan Bruce to stand alone without permitting evidence to be introduced for impeachment purposes. This is especially true since some of the testimony given by Respondent E. Ivan Bruce was contrary to common and documented medical knowledge relating to experimental drugs and the effect of certain treatments on one's memory and coordination (See cross-examination of E. Ivan Bruce

in Volume I, Statement of Facts, p. 109, line 14; also pp. 205 to 206; Record Instrument XII). These factors raised issues of negligence within the contemplation of *Bowles v. Bourden*, 219 SW2d 779 (1949), even though the ruling of the Court in refusing to admit the letters into evidence precluded full development of the negligence and proximate cause issues, as well as more remotely false imprisonment as it relates to duress, *Newton v. Rhoads Brothers*, 24 SW2d 378 (1930), for expert testimony would have shown that the necessary warnings of the effects and consequences to Petitioner were not given Petitioner's father who signed the consent to treatment form of the hospital facility without consulting Petitioner (See Consent Form: Medical Record of Elijah White Ratcliff in Volume I, Statement of Facts; Record Instrument XII, p. 47).

Finally, among the errors which Petitioner has viewed as inconceivably flagrant was the admission into evidence, over the timely objection of Petitioner, of certain narrative from the medical records of Petitioner by Respondent Bruce at pages 181 to 192 of Volume I, Statement of Facts (See Record Instrument XII). This occurred after Petitioner had rested and Respondent Bruce took the stand in behalf of his case. He again was allowed to lecture to the jury in spite of Petitioner's timely objection further prejudicing Petitioner's case since the statements asserted were not relevant. They dealt with Petitioner's attitude toward ministers, his response to comments about his grandfather, his sexual habits and other irrelevant matters having no material factual basis

and alluded to for the purpose of evading Petitioner's case. To be relevant, evidence offered must correspond to the allegations of the pleadings and be confined to issues made by them, *Missouri, Kansas & Texas Railroad Company v. Keaveny*, 80 SW 387 (1904), but Respondent E. Ivan Bruce failed to relate the narrative from his medical records of Petitioner to any issue raised by the pleadings either directly or remotely and did not attempt to establish a factual basis for the conclusions pronounced through narrative. Consequently, his product, the medical records of Petitioner, did not resemble a genuine effort by a professional to relate the facts to medical conclusions and the evidence to legal or medical issues resulting in a hopelessly prejudiced case against Petitioner, *Missouri, Kansas & Texas Railroad Company v. Keaveny*, 80 SW 387 (1904).

III.

Petitioner had the Clerk of the District Courts of Galveston County, Texas to issue a *subpoena duces tecum* for Respondent E. Ivan Bruce, who is a physician and psychiatrist at the University of Texas Medical Branch at Galveston, Texas, to appear as a witness in Cause No. 102,754 in the 56th Judicial District of Texas and bring with him all medical records on file with the University of Texas Medical Branch at Galveston, Texas of Elijah White Ratcliff, Petitioner (See Volume I, Statement of Facts, p. 46; Record Instrument XII). He purported to comply with the directive, and among the materials brought was a medication chart of the various and sundry medic-

inals and treatments administered to Petitioner during his confinement to the medical facility from September 3, 1964 through November 20, 1964 (See Record Instrument XII, pp. 53-67) and nurse's notes showing the reaction of Petitioner to these medications (See Record Instrument XII, p. 68). The Court admitted the medication chart with its contents into evidence at pages 53 through 67 of Volume I, Statement of Facts (See Record Instrument XII) when offered by Petitioner, and Respondent E. Ivan Bruce admitted upon direct examination the danger inherent in being administered such medicinals and treatment. Respondent Bruce, also, admitted that a consequence of their use could be an individual's death (See Record Instrument XII, p. 200), or other lesser negative effects. He stated erroneously, however, upon cross-examination, that none of the drugs were in the experimental stage when used (See Record Instrument XII, p. 206). In any event, the time for disclosure is prior to treatment and before harm has resulted. *Escobedo v. Illinois*, 378 U.S. 478 (1964).

Petitioner's response to written interrogatories appearing in Volume I of the Statement of Facts (See answers of Elijah White Ratcliff to interrogatories; Record Instrument XII, pp. 120-125) was that he had encountered difficulty in coordinating himself and suffered a loss of memory as well as an impairment of his ability to memorize following his confinement to the University of Texas Medical Branch at Galveston, Texas. The testimony of John W. Ratcliff, the

father of Petitioner, in Volume I of the Statement of Facts (See Record Instrument XII, pp. 116-120) revealed that the possible consequences of the medicinals and treatment used at the direction of Respondent E. Ivan Bruce had not been disclosed to the father, and he did not presume a dangerous undertaking by Respondents, or an undertaking which would separate Petitioner from his law practice for in excess of two months. The testimony of Respondent Bruce considered most liberally in support of his case does not reflect that informed consent requirements were met, and this conclusion is further substantiated by the previously discussed answers of Petitioner and his father.

Such testimony coupled with the evidence admitted from the medication charts of Petitioner, with accompanying nurse's notes, raised a substantial issue of damages resulting from negligence in administering the medicinals and treatment which was genuine in addition to the issues of assault and false imprisonment, also discussed previously. *Louisell & Williams, Trial of Medical Malpractice Cases, Paragraphs 4.17 and 8.09.* Therefore, in the interest of clarity, Petitioner filed a Motion for Leave to File an Amended Petition with Plaintiff's Third Amended Original Petition attached thereto at page 208, Volume I of the Statement of Facts (See Record Instrument XII) in order to conform the pleadings to the evidence and proof presented upon the trial. *Garrett v. Wichita Falls*, 329 SW2d 491 (1959). The Court refused to grant Petitioner's motion further minimizing Petitioner's

case since under the pleadings as they remained, the jury was not allowed to consider the elements and issues of negligence on the part of Respondents as the evidence and proof had established. *State v. Peeler*, 200 SW2d 874 (1947).

The Request for Preparation of Record submitted by Petitioner to the Clerk of the District Courts of Galveston County, Texas and to the Official Court Reporter of the 56th Judicial District of Texas (See pp. 36 through 38 of Transcript; Record Instrument II) sought to include the originals of the Motion for Leave to File an Amended Petition with Plaintiff's Third Amended Original Petition attached as well as Plaintiff's Special Issues in the appellate record but without attainment of the desired goal.

Rules 67 and 90, Texas Rules of Civil Procedure, would have established grounds for the jury to consider the issues submitted by Petitioner in spite of the Court's ruling on the point of amendment, but the disallowance of Petitioner's motion coupled with the Court's refusal to submit Petitioner's requested special issues covering specific negligence, intent, and damages was reversible error. *Stalnaker v. Howard*, 230 SW2d 563 (1950).

Plaintiff's Second Amended Original Petition (See Transcript, pp. 3-4; Record Instrument II) sets forth sufficient facts to establish a medical malpractice suit in that it alleges the official duties of Respondents who are physicians, and that their conduct was

wrongful and violative of the medical standards required for this jurisdiction. A more detailed allegation than presented was not a legal requirement of procedure, *Rule 90, Texas Rules of Civil Procedure*, but Petitioner offered Plaintiff's Third Amended Original Petition for filing in the interest of clarity (See Volume I, Statement of Facts, p. 20; Record Instrument XII), and in order to conform the pleadings to all aspects of the evidence and proof presented during the trial. *Rule 67, Texas Rules of Civil Procedure; Garrett v. Wichita Falls*, 329 SW2d 491 (1959).

It was within the trial Court's discretion to allow the trial amendment, *Famous Department Store v. State*, 371 SW2d 76 (1963), and it was an abuse of its discretion to refuse the special issues requested by Petitioner which were proper under either Plaintiff's Second Amended Original Petition or Plaintiff's Third Amended Original Petition (See Transcript "Supplemental," p. 3, Special Issues 1 through 18; Record Instrument XX). *Stalnaker v. Howard*, 230 SW2d 563 (1950).

IV.

Petitioner concedes that only in exceptional cases is a party entitled to reversal of a trial Court's judgment in the absence of a statement of facts. *Houston Fire Casualty Insurance Company v. Walker*, 260 SW2d 600 (1953). But where the record shows that all prerequisites to obtaining a complete record

have been complied with by the appealing party (See Transcript pp. 36-38; Transcript filing date, Transcript cover; Statement of Facts filing date, Statement of Facts cover; Record Instrument XII), the presumption that the record is complete has been rebutted (Also see Record of the Supreme Court of Texas, Instrument I seeking Writ of Mandamus). Furthermore, since a supplemental transcript containing the essential evidence desired in a statement of facts was presented before the motion for rehearing was ruled upon by the Court of Civil Appeals, it was improper for that court to overrule Petitioner's motion or for the Supreme Court of Texas to deny writ of error without considering such supplemental transcript, and the circumstances surrounding its delay which were within each court's knowledge through the record as well as accompanying petitions for a writ of mandamus to compel issuance of a complete record for filing with the Court of Civil Appeals numbered 37 in the 14th Court of Civil Appeals and B-241 in the Supreme Court of Texas (No. 37 not included by Clerk; Record of the Supreme Court of Texas, Instruments I and II). *Hodges v. Nix*, 225 SW2d 576 (1950). It is decided in Texas that a party deprived of a complete record material to his appeal without fault or negligence of himself or his counsel is entitled to reversal of the judgment for which he appealed. *Koonce v. City of Mesquite*, 382 SW2d 309 (1964).

CONCLUSION.

The cause hereby reviewed developed to be a courtroom mockery characterized by the trial

Court's flagrant disregard for well established procedural and substantive legal requirements to the detriment of Petitioner, and the Judgment entered by the 56th Judicial District of Texas should be reversed by ruling that as a matter of law Petitioner is entitled to recover the total of the amounts in controversy in cases pending and lost while he was illegally confined to the University of Texas Medical Branch at Galveston, Texas, which equals Six hundred sixty thousand ($660,000.00) dollars, and the case should be remanded for the trial Court to determine the extent of Petitioner's damages resulting from the wrongful assault by Respondents and the negligence of Respondents toward Petitioner at the time of and during his confinement to the previously mentioned institution.

The Texas Constitution, statutes, rules of procedure and common law are and since his cause of action was created have been adequate to provide the legal protection of basic rights sought by Petitioner, but as applied to the immediate facts in issue, an arbitrary infringement upon rights guaranteed by the Fifth Amendment to the Constitution of the United States and the Fourteenth Amendment to the Constitution of the United States was initiated by Respondents and affirmed by the Texas judiciary.

Petitioner respectfully submits that this Petition for a Writ of Certiorari should be granted and the Judgment of the District Court, sanctioned by the Court of Civil Appeals and the Supreme Court of

Texas, reversed and remanded for adjudication of the remaining issues. This position is predicated on the fact that the courts of Texas have failed to afford Petitioner the degree of basic and fundamental fairness guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States of America as measured by the procedural and substantive legal requirements within the jurisdiction of Texas which unconstitutional action consisted of depriving Petitioner of liberty and property rights without due process of law. *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Hurd v. Hodge*, 334 U.S. 24 (1948).

To rule contrarily would be to allow Respondents to informally encroach upon Petitioner's freedom of speech, protection of property, and freedom of association as an attorney at law as they could not do formally and legally under the Constitution and laws of the United States as agents of the State of Texas. *Hannegan v. Esquire*, 327 U.S. 146 (1946); *Rochin v. People of California*, 342 U.S. 165 (1952), and further to commit a tort without liability through a remedy at law. *Young v. Masci*, 289 U.S. 253 (1933).

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